

**A Orang-orang yang menduduki rumah di bawah
hakmilik Geran No 26977 Lot 4271, Johor Bahru v
Punca Klasik Sdn Bhd & other appeals**

**B COURT OF APPEAL (KUALA LUMPUR) — CIVIL APPEAL NO J-02-487
OF 1995 CONSOLIDATED WITH CIVIL APPEAL NOS J-02-352 OF
1996 AND J-02-263 OF 1996
SHAIK DAUD, AHMAD FAIRUZ AND MOKHTAR SIDIN JJCA
27 JUNE 1997**

**C *Civil Procedure — Parties — Locus standi — Action against unnamed defendants
under O 89 of the Rules of the High Court 1980 — Failure of defendants to apply to
court to be joined as defendants or be made a party — Whether defendants have locus
standi — Rules of the High Court 1980 O 15 rr 6, 10 & O 89 r 5***

**D In these appeals, counsel for the respondent ('the plaintiff') raised a
preliminary objection that the appellants ('the defendants') and their
counsel had no locus standi because the defendants were unnamed
persons. The action had been commenced by the plaintiff in the
High Court under O 89 of the Rules of the High Court 1980 where
the defendants were unnamed persons. When the record of appeal
was filed, the title had not been changed and the defendants remained
as unnamed persons.**

E **Held, allowing the preliminary objection:**

**F The defendants were unnamed persons at the commencement of
these actions in the High Court which is the correct procedure under
O 89. The actions were in accordance with Form 8A. Pursuant to
O 89 r 5, it is clear that an unnamed person has no locus standi until
he identifies himself by name and applies to the court to be joined as
a defendant. Until he does so, he is a non-identity and he has no
locus standi. Though the word 'may' is used in r 5, that is a specific
provision to be complied with before any person could be given the
opportunity to be heard. A proper application must be made to the
court and not merely by insertion of a name as a party. The failure of
any person to do so will not give him or his solicitors the right to
appear and be heard by the court.**

**G From the record of the present appeals, it could be seen that
there was no application by any of the unnamed defendants to be
joined as defendant under O 89 r 5 or be made a party in accordance
with O 15 r 6 or r 10. There was no application by any of them in
their personal capacity to be made a defendant to the action which
should be the first step to be taken in order for them to be identified.
As such, there was no proper application by any of the occupiers to
be made as an additional defendant by naming himself in accordance
with O 89 r 5. Since there was no application under O 89 r 5 or O 15
r 6 or r 10, then there was no named defendant and as such no one
could be heard as a defendant. The trial judge had erred when he
heard counsel representing the defendants when there was no proper
application by any of them to be joined as a defendant.**

H

I

Since the present appeals had no named defendant on record, there were no appellants in the present appeals. As such, when counsel for the defendants announced that he was representing the appellants, he had no locus standi to do so (see pp 765F-I, 766A-I and 767D).

[Bahasa Malaysia summary]

Dalam rayuan-rayuan ini, peguam penentang ('plaintif') telah membangkitkan bantahan permulaan bahawa perayu-perayu ('defendan-defendan') dan peguam mereka tidak mempunyai sebarang locus standi kerana defendan-defendan adalah orang yang tidak bernama. Tindakan telah dimulakan oleh plaintif di Mahkamah Tinggi di bawah A 89 Kaedah-Kaedah Mahkamah Tinggi 1980 di mana defendan-defendan adalah orang yang tidak bernama. Apabila rekod rayuan difailkan, tajuk tindakan tidak ditukar dan defendan-defendan kekal sebagai orang tidak bernama.

Diputuskan, membenarkan bantahan permulaan:

Defendan-defendan adalah orang yang tidak bernama pada masa tindakan-tindakan ini dimulakan di Mahkamah Tinggi yang merupakan prosedur yang betul di bawah A 89. Tindakan-tindakan adalah menurut Borang 8A. Menurut A 89 k 5, adalah jelas bahawa seseorang yang tidak bernama tidak mempunyai apa-apa locus standi sehingga dia memperkenalkan diri dengan nama dan memohon kepada mahkamah untuk dicantum sebagai defendan. Sehingga dia berbuat demikian, dia tidak mempunyai identiti atau apa-apa locus standi. Walaupun perkataan 'boleh' digunakan dalam k 5, ia adalah suatu peruntukan khusus yang harus dipatuhi sebelum sesiapa boleh diberikan peluang untuk didengar. Permohonan yang betul mestilah dibuat kepada mahkamah dan bukan cuma memasukkan nama sebagai pihak. Kegagalan seseorang untuk berbuat demikian tidak akan memberinya atau peguamcaranya hak untuk hadir dan didengar di mahkamah.

Dari rekod rayuan-rayuan ini, kelihatan bahawa tiada sebarang permohonan oleh mana-mana defendan yang tidak bernama untuk dicantum sebagai defendan di bawah A 89 k 5 atau dijadikan suatu pihak menurut A 15 k 6 atau k 10. Tiada permohonan oleh sesiapa daripada mereka dalam keupayaan peribadi untuk dijadikan defendan kepada tindakan yang harus merupakan langkah pertama yang diambil bagi mengenalpasti mereka. Oleh itu, tiada sebarang permohonan yang betul oleh mana-mana penghuni yang dibuat sebagai defendan tambahan dengan menamakan diri menurut A 89 k 5. Oleh kerana tiada permohonan di bawah A 89 k 5 atau A 15 k 6 atau k 10, maka tiada defendan yang dinamakan dan oleh itu tiada siapa yang boleh didengar sebagai defendan. Hakim perbicaraan terkhalaf apabila beliau mendengar peguam yang mewakili defendan-defendan walhal tiada sebarang permohonan yang betul telah dibuat oleh sesiapa daripada mereka untuk dicantum sebagai defendan. ~

A Oleh kerana rayuan-rayuan ini tidak mempunyai defendan yang dinamakan atas rekod, tiada perayu-perayu dalam rayuan. Oleh itu, apabila peguam defendan-defendan mengumumkan bahawa beliau mewakili perayu-perayu, beliau tidak mempunyai locus standi untuk berbuat demikian (lihat ms 765F-I, 766A-I dan 767D).]

B **Notes**

For cases on locus standi, see 2 *Mallal's Digest* (4th Ed, 1994 Reissue) paras 2441-2442.

Legislation referred to

C Rules of the High Court 1980 O 89 rr 1, 5, O 15 rr 6, 10, Form 8A

Appeal from: Originating Summons No 24-872 of 1994 (High Court, Johor Bahru)

D *Df Puthucheary* (*Sanjay Mohanasundaram* and *Douglas WL Yee* with him) (*Skrine & Co*) for the appellants.

RR Sethu (*Ng Chew Hor* and *Chen Wai fion* with him) (*Wf Chen & Co*) for the respondent.

E *Cur Adv Vult*

Mokhtar Sidin JCA (delivering the judgment of the court): Counsel for the respondent raised a preliminary objection as to the locus standi of the appellants and their counsel when the three appeals were called. The three appeals involved are:

- F
- (i) Rayuan Sipil No J-02-487-1995
 - (ii) Rayuan Sipil No J-02-352-1996
 - (iii) Rayuan Sipil No J-02-263-1996

G The appellants in the first and third appeals described themselves as follows:

Orang-orang yang menduduki rumah (sebahagian papan, sebahagian simen) dan setor-setor papan yang didirikan atas sebahagian tanah yang terkandung di bawah hakmilik Geran No 26977 bagi Lot 4271 dalam Bandar Johor Bahru, Johor.

H The appellants in the second appeal described themselves as follows:

Orang-orang yang menduduki rumah papan yang didirikan atas sebahagian tanah yang terkandung di bawah Hakmilik Geran No 26977 bagi Lot 4271 dalam Bandar Johor Bahru, Johor.

I As can be seen from the caption of the appeals, the titles of the appellants are given to be the occupiers of the said land. These titles followed the titles as described in the originating summons filed by the respondent. The respondent is one and the same in the three appeals and is the plaintiff in the originating summons.

For the convenience of all concerned in this judgment, we will refer the appellants as the defendants and the respondent as the plaintiff. A

The plaintiff is the registered owner of the land comprised under Grant No 26977 for Lot No 4271, in the township of Johor Bahru ('the land'). The initial area of the land was 27 acres 0 rood 20 poles. The state government had acquired approximately three acres of the land. The area of the land at the filing of the originating summons measured approximately 24 acres. The land was previously described or known as CT 2264 and before that as Malay Grant 1572. By a court order dated 22 January 1949, the land was vested in the Estate and Trust Agencies (1927) Ltd as trustees for the estate of Syed Hassan bin Ahmad Alattas. The Estate and Trust Agencies (1927) Ltd remained the registered proprietor of the land until 13 January 1981 when they transferred the land to four trustees of the estate, namely Syed Mohamed bin Idroos Alattas, Dato' Ungku Mohsin bin Mohamed, Syed Ali bin Mohamed Alattas and Syed Hussein bin Salim Alattas. On 6 May 1981, the land was again transferred and registered in the name of four new trustees of the estate, namely Syed Hussein bin Salim Alattas, Syed Salleh bin Abdul Rahman Alattas, Syed Abd Kadir bin Mohd Alattas and Syed Mohd Zain Alattas. On 21 January 1994, the plaintiff became the registered proprietor of the land. B C D

After becoming the registered proprietor of the land, the plaintiff visited the land and found houses had been erected on the land which were occupied by several individuals. They were there without the permission or the agreement of the plaintiff. Among the houses are those described in the present appeals. The occupiers of these houses are said to be squatters. E

The plaintiff's solicitors issued notices of demand for vacant possession from the squatters. On their failure to hand over vacant possession, the plaintiff took up the present action which is under O 89 of the Rules of the High Court 1980. When the plaintiff took up the action, they took advantage of the provisions of O 89 r 1 which states as follows: F

Where a person claims possession of land which he alleges is occupied solely by a person or persons (not being a tenant or tenants holding over after the termination of the tenancy) who entered into or remained in occupation without his licence or consent or that of any predecessor in title of his, the proceedings may be brought by originating summons in accordance with the provisions of this Order. G

Order 89 r 1 is identical to O 113 r 1 of the English Rules. Paragraph 113/1-8/1 of the annual *Supreme Court Practice* 1997 states: H

This order does not provide a new remedy but rather a new procedure for the recovery of possession of land which is in wrongful occupation by trespassers. Its machinery is designed to overcome the apparent shortcomings of the present procedural law in two respects, namely: I

- (a) by providing the procedure for claiming possession of land where not every wrongful occupier can reasonably be identified, the order overcomes the question whether an order for possession of land can be made and enforced in ex parte proceedings in which no person is

- A named as a defendant ... or only in proceedings in which at least one person is named as the defendant ... ; and
- (b) by shortening the steps and the time taken for obtaining a final order for possession of land, the order overcomes the question whether such an order can be made on an interlocutory application or only by way of a final judgment or order

B Further down the paragraph, it states:

- The application of this order is narrowly confined to the particular circumstances described in r 1, ie *to the claim for possession of land which is occupied solely by a person or persons who entered into or remain in occupation without the licence or consent of the person in possession or of any predecessor of his*. The exceptional machinery of this order is plainly intended to remedy an exceptional mischief of a totally different dimension from that which can be remedied by a claim for the recovery of land by the ordinary procedure by writ followed by judgment in default or under O 14. The order applies where the occupier has entered into occupation without licence or consent; and this order also applies to a person who has entered into possession of land with a licence but has remained in occupation without a licence, except perhaps where there has been the grant of a licence for a substantial period and the licensee holds over after the determination of the licence (Emphasis added.)
- C
- D

- As can be seen above, this order provides a remedy for a land owner against a person or persons in unlawful occupation of his land. It also provides for special remedy against an illegal or unlawful occupier when he is unknown or his name is not known to the owner. An application under this order could also be used against a person whose name is known.
- E

- In our view, at the commencement of an action under O 89, a defendant is described merely as 'occupier of' especially when the occupier or his name is not known to the owner. That is the situation in the present appeals. The defendants are unnamed persons at the commencement of these actions in the High Court which in our view is the correct procedure under O 89. The actions are in accordance with Form 8A. In the form, there is a note stating 'Defendant (if any) whose name is known to the plaintiff'. It follows from that as follows:
- F
- G

To (CD and) every (other) person in occupation

- The words 'every (other) person in occupation' are for unknown persons or their names are not known to the owner. In our view, the status of any unnamed person is indicative that he has no identity and as such has no locus standi. In order to gain the necessary locus standi, an unnamed person must identify himself and may apply to the court either personally or by his solicitors by naming himself and to be joined as a defendant. This can be seen from the note at the bottom of the form where it states:
- H

- Note — Any person occupying the premises who is not named as a defendant by this summons *may apply to the court personally or by counsel or solicitor to be joined as a defendant*. If a person occupying the premises does not attend personally or by counsel or solicitor at the time and place above-mentioned, such order will be made as the Court may think just and expedient. (Emphasis added.)
- I

Order 89 r 5 provides as follows:

5 Application by occupier to be made a party

Without prejudice to Order 15 rules 6 and 10, any person not named as a defendant who is in occupation of the land and wishes to be heard on the question whether an order for possession should be made may apply at any stage of the proceedings to be joined as a defendant.

From the above, it is clear to us that an unnamed person has no locus standi until he identifies himself by name and applies to the court to be joined as a defendant. He could do so at any stage of the proceedings. Until he does so, he is a non-identity and he has no locus standi. In the annual *Supreme Court Practice 1997* at para 113/1-8/8, it is explained as follows:

Application by occupier to be joined as defendant — Any person who is in occupation of the land but who is not named as a defendant in the originating summons may apply at any stage of the proceedings to be joined as a defendant (see r 5). The right to make such application is without prejudice to O 15 r 6 or to the somewhat similar provisions of O 15 r 10, though neither of these rules is entirely approximate to the procedure under this order. Under r 5, all that the applicant needs to show is that he is in occupation of the land and that he 'wishes to be heard on the question whether an order for possession should be made'. (Emphasis added.)

In our view, it is clear that before any person could be heard, he must identify himself and apply to become a party to the proceedings, namely to be named and joined as a defendant. Though the word 'may' is used in r 5, in our view, that is a specific provision to be complied with before he could be given the opportunity to be heard. In our view, a proper application must be made to the court and not merely by insertion of name as a party. In our view, the failure of any person to do so will not give him or his solicitors the right to appear and be heard by the court.

From the record of the present appeals, it could be seen that there was no application by any of the unnamed defendants to be joined as defendant under O 89 r 5 or be made a party in accordance with O 15 r 6 or r 10. In Civil Appeal No J-02-352-1996, one Ungku Aziz bin Mohamed entered appearance and filed several affidavits and in Civil Appeal No J-02-487-1995, only an affidavit was filed by one Ng Eng Hing. There was no application by any of them in their personal capacity to be made a defendant to the action which should be the first step to be taken in order for them to be identified. As such, there was no proper application by any of the occupiers to be made as an additional defendant by naming himself in accordance with O 89 r 5.

In our view, since there is no application under O 89 r 5 or O 15 r 6 or r 10, then there is no named defendant and as such no one could be heard as a defendant. In the three appeals, we are of the opinion that the learned trial judge had erred when he heard counsel representing Ungku Aziz bin Mohamed and Ng Eng Hing when there was no proper application by either of them to be joined as a defendant.

A When counsel for the respondent, En RR Sethu, took up the preliminary objection, he had done so correctly. Encik Sethu raised his objection on the ground that when the record of appeal was filed, the title had not been changed and the defendants remained as unnamed persons which in our view are anonymous. The names of Ungku Aziz and Ng Eng Hing purportedly to be represented by Datuk Dominic Puthucheary and his assistants did not appear as a party to the action anywhere in the record of appeal.

B In our view, both Ungku Aziz bin Mohamed and Ng Eng Hing never became a party to this proceedings in the court here or the court below. They have not ratified the error when they appealed to this court or when they filed their record of appeal. They could not do so now because there was no application by them to be named and be added as defendants to enable them to become parties to the action. They had the benefits of their solicitors' advice and as such they could not blame anyone else.

C In our view, the preliminary objection by En RR Sethu was well taken. Since the present appeals have no named defendant on record, there are no appellants in the present appeals. As such, in our view, when Datuk Puthucheary announced that he was representing the appellants, he had no locus standi to do so.

D We allowed the preliminary objection by the respondent and dismissed the appellants' appeals with costs.

E *Preliminary objection allowed.*

Reported by Jafisah Jaafar

F

G

H

I